

# CLAIMS RESOLUTION TRIBUNAL

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In re Holocaust Victim Assets Litigation  
Case No. CV96-4849

## **Certified Award**

to Claimant [REDACTED]

## **in re Accounts of Tony Feistmann and Heinrich Feistmann**

Claim Number: 770004/AX/AC<sup>1</sup>

Award Amount: 514,250.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the accounts of [REDACTED]. This award is to the unpublished accounts of Tony Feistmann (“Account Owner T. Feistmann”) and Heinrich Feistmann (“Account Owner H. Feistmann”) (together the “Account Owners”), over which [REDACTED] (the “Power of Attorney Holder”) held power of attorney, at the [REDACTED] (the “Bank”).

All awards are published, but where a claimant has requested confidentiality, as in this case, the names of the claimant, any relatives of the claimant other than the account owner, and the bank have been redacted.

### **Information Provided by the Claimant**

The Claimant submitted an Initial Questionnaire (“IQ”) to the Court in 1999 identifying the Power of Attorney Holder as his father, [REDACTED], who was born on 9 February 1897, and was married to [REDACTED], née [REDACTED]. The Claimant also identified Account Owner H. Feistmann as his paternal grandfather, Heinrich Feistmann, who was married to [REDACTED]. The Claimant indicated that his father’s family was Jewish, and that his father resided in Offenbach, Germany when the Nazis came to power. The Claimant further indicated that his father fled Germany in 1936 or 1937 to escape Nazi persecution, fleeing initially to France, then to Switzerland, subsequently to South America, and finally to the United States. According to the Claimant, many of his parents’ relatives perished in the Holocaust. The Claimant indicated that his father died on 16 October 1982 in Asheville, North Carolina, United States. In a telephone conversation with the Claimant on 26 October 2004, the Claimant

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<sup>1</sup> [REDACTED] did not submit a Claim Form to the CRT. However, in 1999 he submitted an Initial Questionnaire (“IQ”), numbered ENG 0001-000068, to the Court in the United States. Although this IQ was not a Claim Form, the Court, in an Order signed on 30 July 2001, ordered that those Initial Questionnaires which can be processed as claim forms be treated as timely claims. Order Concerning Use of Initial Questionnaire Responses as Claim Forms in the Claims Resolution Process for Deposited Assets (July 30, 2001). The IQ was forwarded to the CRT and has been assigned claim number 770004.

indicated that he does not know many details about his father's family because he was born in the United States after his family fled Germany, and many of his relatives died in the Holocaust.

In support of his claim, the Claimant submitted documents, including: (1) a copy of his birth certificate, indicating that [REDACTED] was born on 8 December 1942 in Asheville, and that his parents were [REDACTED] and [REDACTED], (2) a copy of his father's will, dated 30 April 1980, indicating that [REDACTED] bequeathed his residual estate to his son, [REDACTED], and containing [REDACTED]'s signature, and (3) a copy of his father's death certificate, indicating that [REDACTED], who was born on 9 February 1897 in Germany, and was the son of Heinrich Feistmann and [REDACTED], died on 16 October 1982 in Asheville, and that he had a son named [REDACTED]. The Claimant indicated that he was born on 8 December 1942 in Asheville.

### **Information Available in the Bank's Records**

The Bank's record submitted by the auditors who carried out the investigation of this bank to identify accounts of Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation") consists of a printout from the Bank's database. According to this record, Account Owner T. Feistmann was *Frau* (Mrs.) Tony Feistmann, née Mayer-Bass, who resided in Offenbach, Germany and the Power of Attorney Holder was [REDACTED]. The Bank's record indicates Account Owner T. Feistmann held an account, the type of which is not indicated, numbered 36928, which was opened on 23 May 1931.

Pursuant to Article 6 of the Rules, the CRT requested the voluntary assistance of the Bank to obtain additional information about this account ("Voluntary Assistance"). The Bank provided the CRT with additional documents. These documents consist of a customer card, power of attorney forms, and a written statement made by Dr. Hans Studer, an attorney in Lucerne, Switzerland.

These records indicate that account 36928 was a custody account, and that the Power of Attorney Holder resided in Frankfurt am Main, Germany. These records further indicate that Account Owner T. Feistmann held an additional custody account, numbered 14057, which was opened on 28 July 1939 and closed on 24 January 1941, and a demand deposit account, which was opened on 20 July 1939 and closed on 22 June 1942. These records include the signatures of Account Owner T. Feistmann and the Power of Attorney Holder. The Bank's records do not indicate when custody account 36928 was closed, nor do these records indicate the value of the accounts held by Account Owner T. Feistmann. The auditors who carried out the ICEP Investigation did not find custody account 36928 in the Bank's system of open accounts, and they therefore presumed that it was closed. There is no evidence in the Bank's records that Account Owner T. Feistmann, the Power of Attorney Holder, or their heirs closed the accounts and received the proceeds themselves.

The Bank's records also indicate that Account Owner H. Feistmann was *Herr* (Mr.) Heinrich Feistmann, who lived in Lucerne, and that he owned a custody account, numbered 38671. According to the Bank's records, Account Owner H. Feistmann granted power of attorney to his

son, *Herr* [REDACTED], the Power of Attorney Holder, on 8 February 1934. The Bank's records indicate that this power of attorney was subsequently voided. The Bank's records further indicate that Account Owner H. Feistmann and the Power of Attorney Holder were both originally German citizens who were stripped of their citizenship during the Second World War. These records indicate that Account Owner H. Feistmann resided in Lucerne until emigrating to the United States in 1942, and that the Power of Attorney Holder resided in Paris, France until he eventually emigrated to the United States, as well. The Bank's records indicate that Account Owner H. Feistmann died in the United States by the end of 1945. Finally, these records include the signatures of Account Owner H. Feistmann and the Power of Attorney Holder. The Bank's records do not show when the account at issue was closed, nor do these records indicate the value of this account. There is no evidence in the Bank's records that Account Owner H. Feistmann, the Power of Attorney Holder, or their heirs closed the account and received the proceeds themselves.

## **The CRT's Analysis**

### Identification of the Account Owners

The Claimant has plausibly identified Account Owner H. Feistmann and the Power of Attorney Holder. The Claimant's grandfather's and father's names match the unpublished names of Account Owner H. Feistmann and the Power of Attorney Holder. The Claimant's father's country of residence matches the unpublished country of residence of Account Owner T. Feistmann and the Power of Attorney Holder, and the unpublished country of origin of Account Owner H. Feistmann. The Claimant indicated that his father resided in Offenbach, the unpublished city of residence of Account Owner T. Feistmann; the CRT notes that Offenbach is located less than ten kilometers from Frankfurt, the Power of Attorney Holder's unpublished city of residence. The Claimant also identified the relationship between Account Owner H. Feistmann and the Power of Attorney Holder, and indicated that his father emigrated to the United States, which matches unpublished information in the Bank's records. Finally, the Claimant submitted a copy of his father's signature, which matches the Power of Attorney Holder's signatures for the accounts of both Account Owners contained in the Bank's records.

The CRT notes that the Claimant did not identify the name of Account Owner T. Feistmann, but notes that the Account Owners and the Power of Attorney Holder have the same family name, rendering it plausible that the Account Owners and the Power of Attorney Holder were related. The CRT further notes that the Claimant was not born until after his father fled Germany, and it is therefore plausible that he would not know the names of his relatives who remained in Europe or perished in the Holocaust. In support of his claim, the Claimant submitted (1) a copy of his birth certificate, indicating that his father was [REDACTED], (2) a copy of his father's will, and (3) a copy of his father's death certificate, indicating that [REDACTED] was the son of Heinrich Feistmann, providing independent verification that the persons who are claimed to be Account Owner H. Feistmann and the Power of Attorney Holder had the same names recorded in the Bank's records as the names of Account Owner H. Feistmann and the Power of Attorney Holder, and that they were from Germany.

The CRT notes that there are no other claims to these accounts.

## Status of the Account Owners and the Power of Attorney Holder as Victims of Nazi Persecution

The Claimant has made a plausible showing that the Power of Attorney Holder was a Victim of Nazi Persecution. The Claimant stated that the Power of Attorney Holder was Jewish, and that he fled Germany in 1936 or 1937 to avoid Nazi Persecution. The Claimant also indicated that many members of his family perished in the Holocaust. The CRT also notes that the Bank's records indicate that both Account Owner H. Feistmann and the Power of Attorney Holder were German citizens who were rendered stateless by the Nazis, and that they emigrated to the United States.

## The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to Account Owner H. Feistmann and the Power of Attorney Holder by submitting specific information and documents, demonstrating that Account Owner H. Feistmann was his grandfather and that the Power of Attorney Holder was his father. These documents include (1) a copy of his birth certificate, indicating that his father was [REDACTED], (2) a copy of his father's will, indicating that [REDACTED] had a son named [REDACTED], and (3) a copy of his father's death certificate, indicating that [REDACTED] was the son of Heinrich Feistmann, and that he had a son named [REDACTED]. The CRT further notes that the Account Owners and the Power of Attorney Holder have the same family name, rendering it plausible that the Account Owners and the Power of Attorney Holder were relatives. There is no information to indicate that the Account Owners or the Power of Attorney Holder have other surviving heirs.

## The Issue of Who Received the Proceeds

The Bank's records indicate that Account Owner T. Feistmann held a custody account that was closed on 24 January 1941, a demand deposit account that was closed on 22 June 1942, and another custody account that was presumed closed by the auditors who conducted the ICEP Investigation. These records also indicate that Account Owner H. Feistmann held a custody account, but they do not indicate when this account was closed.

With respect to Account Owner H. Feistmann's account, the CRT notes that the Bank's records indicate that Account Owner H. Feistmann resided outside Nazi-dominated territory. However, given that the Bank's records do not indicate when or to whom the account was closed, that Account Owner H. Feistmann fled his country of origin due to Nazi persecution, that he may have had relatives remaining in his country of origin and that he may therefore have yielded to Nazi pressure to turn over his accounts to ensure their safety; with respect to the accounts of Account Owner T. Feistmann, given that the Power of Attorney Holder fled Nazi Germany in 1936 or 1937, and that it is possible that Account Owner T. Feistmann died in the Holocaust; and with respect to all of the Account Owners' accounts, given that there is no record of the payment of the Account Owners' accounts to them, nor any record of a date of closure of two of the accounts; that the Account Owners, the Power of Attorney Holder, and their heirs would not have been able to obtain information about the accounts after the Second World War from the Bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by account owners because of the banks' concern regarding double liability; and given the application of Presumptions (h) and (j), as provided in Article 28 of the

Rules Governing the Claims Resolution Process, as amended (the “Rules”) (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owners, the Power of Attorney Holder, or their heirs. Based on its precedent and the Rules, the CRT applies presumptions to assist in the determination of whether or not Account Owners or their heirs received the proceeds of their accounts.

#### Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimant. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that Account Owner H. Feistmann was the Claimant’s grandfather, and that the Power of Attorney Holder was the Claimant’s father, and notes that the Account Owners and the Power of Attorney Holder have the same family name, rendering it plausible that the Account Owners and the Power of Attorney Holder were related, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owners, nor the Power of Attorney Holder, nor their heirs received the proceeds of the claimed accounts.

#### Amount of the Award

In this case, Account Owner T. Feistmann held two custody accounts and one demand deposit account, and Account Owner H. Feistmann held one custody account. Pursuant to Article 29 of the Rules, when the value of an account is unknown, as is the case here, the average value of the same or a similar type of account in 1945 is used to calculate the current value of the account being awarded. Based on the ICEP Investigation, in 1945 the average value of a custody account was 13,000.00 Swiss Francs (“SF”), and the average value of a demand deposit account was SF 2,140.00. Thus, the total 1945 average value of the accounts at issue is SF 41,140.00. The current value of this amount is calculated by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 514,250.00.

#### **Scope of the Award**

The Claimant should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on his claim to determine whether there are additional Swiss bank accounts to which he might be entitled, including research of the Total Accounts Database (consisting of records of 4.1 million Swiss bank accounts which existed between 1933 and 1945).

#### **Certification of the Award**

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal  
23 February 2006